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6 UNITED STATES DISTRICT COURT

## 7 DISTRICT OF NEVADA

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9 JOHN OLIVER SNOW,

Case No. 2:03-cv-00292-MMD-CWH

10 Petitioner,

ORDER

11 v.

12 TIMOTHY FILSON, *et al.*,13 Respondents.  
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15

16 In this capital habeas corpus action, brought by Nevada prisoner John Oliver  
17 Snow, the Court denied Snow's second amended habeas petition on September 25,  
18 2015, and judgment was entered on September 28, 2015. See Order dated September  
19 25, 2015 (ECF No. 201); Judgment (ECF No. 202). Snow filed a motion to alter or amend  
20 judgment (ECF No. 209); the Court denied that motion on May 24, 2016 (ECF No. 213).

21 In the September 25, 2015, order, the Court granted Snow a certificate of  
22 appealability. (See Order entered September 25, 2015 (ECF No. 201 at 54-55).)

23 On November 22, 2016, Snow filed a Motion for Clarification (ECF No. 217),  
24 requesting clarification of the scope of the certificate of appealability. Snow has attached  
25 to that motion, as an exhibit, an order of the court of appeals granting a limited remand  
26 for Snow to present the motion for clarification in this Court. (See Order filed November  
27 9, 2016, Exhibit A to Motion for Clarification (ECF No. 217-1).) Respondents did not  
28 respond to the motion for clarification.

1 In his motion, Snow argues that the certificate of appealability, set forth in the  
2 September 25, 2015, order, was inconsistent with the order entered September 12, 2013  
3 (ECF No. 173), in which the Court ruled on a motion to dismiss.

4 The Court finds that Snow has identified three inconsistencies between the  
5 certificate of appealability and the September 12, 2013, order: Claims 1A, 1D and 10H  
6 were not ruled time-barred, and those three claims should not have been listed in the  
7 portion of the certificate of appealability, concerning the Court's ruling regarding the  
8 application of the statute of limitations. There is good cause to grant Snow's motion for  
9 clarification in this regard, and to amend the certificate of appealability, to delete the  
10 mention of Claims 1A, 1D and 10H in paragraph 3 of the certificate of appealability.  
11 However, the remainder of Snow's motion for clarification is without merit.

12 In the September 12, 2013, order, the Court did rule the following claims (among  
13 others) to be procedurally defaulted: Claims 7, 12A, 13B, 13C, 16 (except to the extent  
14 that Snow claims that his appellate counsel was ineffective on his direct appeal for failing  
15 to raise Claims 3 and 5, and the claim in Claim 8 that the prosecutor improperly injected  
16 his own opinion into his closing argument in the penalty phase of the trial), 17, 18 and 21.  
17 (See Order entered September 12, 2013 (ECF No. 173 at 33-54, 56).)

18 In the September 12, 2013, order, the Court did not rule Claims 19 and 20 to be  
19 procedurally defaulted (*see id.* at 53-54, 56), and those claims were not listed in the  
20 certificate of appealability as procedurally defaulted. (See Order entered September 25,  
21 2015 (ECF No. 201 at 55).)

22 In his motion for clarification, Snow repeatedly cites to part IV.H. (pages 42-54) of  
23 the September 12, 2013, order in a manner suggesting that any claim not discussed in  
24 that part of the order was not ruled procedurally defaulted. That is an incorrect reading of  
25 the order. In part IV.H. of the September 12, 2013, order, the Court discussed only the  
26 claim-specific arguments that Snow made, in opposition to the motion to dismiss,  
27 regarding the procedural default (as the heading of part IV.H., at page 42, indicates). The  
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1 court found all the claims alleged by the respondents to be procedurally defaulted to be  
2 procedurally defaulted, unless otherwise specifically stated in the order.

3 In short, in the September 12, 2013, order, the summary of the Court's rulings, at  
4 pages 55 to 56, was accurate. (See Order entered September 12, 2013 (ECF No. 173 at  
5 55-56).) With the limited amendment of the certificate of appealability granted in this  
6 order, the certificate of appealability is consistent with that summary of rulings in the  
7 September 12, 2013, order.


8 Therefore, Snow's Motion for Clarification (ECF No. 217) is granted in part and  
9 denied in part. Paragraph 3 of the certificate of appealability, as set forth at pages 54-55  
10 of the September 25, 2015, order, is amended, as follows. The material in paragraph 3 of  
11 the certificate of appealability, at page 54, line 27, to page 55, line 5, of the September  
12 25, 2015, order, is replaced with the following:

13 (3) whether this Court erred in ruling the following claims  
14 barred by the statute of limitations: 2, 5, 6, 10B, 10F, 10G, 10I,  
15 10J, 10L (to the extent it concerns the jury instruction  
16 regarding premeditation and the lack of a jury instruction  
17 regarding the requirement that aggravating circumstances be  
18 found unanimously by the jury), 10M (to the extent it concerns  
19 the lack of a jury instruction regarding the requirement that  
20 aggravating circumstances be found unanimously by the jury),  
21 10N (to the extent it is based on trial counsel's failure to raise  
22 Claims 5, 6, 12A, 13B, 13C, 19, and 20), 12A, 13B, 13C, 16  
23 (to the extent it is based on appellate counsel's failure to raise  
24 Claims 5, 6, 12A, 13B, 13C, 19, and 20), 17, 18, 20, and 21;  
25 and

26 In all other respects, Snow's Motion for Clarification is denied.

27 It is further ordered that, pursuant to Federal Rule of Civil Procedure 25(d), the  
28 Clerk of the Court will substitute Timothy Filson for Renee Baker, on the docket for this  
case, as the respondent warden, and will update the caption of the action to reflect this  
change.

DATED THIS 22<sup>nd</sup> day of December 2016.

  
MIRANDA M. DU  
UNITED STATES DISTRICT JUDGE